

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 883 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?

No

GUJARAT INDUSTRIAL CO.SERVICE SOCIETY

Versus

STATE OF GUJARAT & ORS.

Appearance:

Shri S.B. Vakil, Advocate, for the Petitioners

Shri T.H. Sompura, Asst. Govt. Pleader, for

Respondents Nos. 1, 2 and 3

Respondents Nos. 4 to 6 unserved

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 30/04/96

ORAL JUDGEMENT

The order passed by the Competent Authority at
Surat (respondent No. 3 herein) on 8th November 1985
under sec. 8(4) of the Urban Land (Ceiling and
Regulation) Act, 1976 (the Act for brief) as affirmed in
appeal by the order passed by the Urban Land Tribunal at

Ahmedabad (respondent No. 2 herein) on 31st July 1987 in Appeal No. Surat-155 of 1986 as also consequential actions are under challenge in this petition under art. 226 of the Constitution of India. By his impugned order, respondent No. 3 declared the holding of one Jagubhai Dahyabhai Patel to be in excess of the ceiling limit by 46428 square meters.

2. The facts giving rise to this petition move in a narrow compass. The petitioner claims to be a proposed co-operative service society and petitioners Nos. 1.1 to 1.25 are its members. It claims to have agreed to purchase from respondents Nos. 4 and 5 one parcel of land bearing survey No. 11 admeasuring 36827 square meters situated at Parvat within the urban agglomeration of Surat (the disputed land for convenience). A copy of the agreement in that regard is at Annexure G to this petition. Respondent No. 4 appears to have filed his declaration in the prescribed form under sec. 6(1) of the Act with respect to his holding within the urban agglomeration of Surat. The disputed land figured in his holding therein. That form was duly processed by respondent No. 3. After observing necessary formalities under sec. 8 of the Act, by his order passed on 8th November 1985 under sub-section (4) thereof, respondent No. 3 declared the holding of respondent No. 4 to be in excess of the ceiling limit by 46428 square meters. Its copy is at Annexure A to this petition. It appears not to have been carried in appeal either by respondent No. 4 or at the instance of respondent No. 5 acting through respondent No. 6 herein. It appears that thereupon the final statement under sec. 9 of the Act was issued and the necessary notification under sec. 10(1) thereof was issued on 12th December 1985. Pursuant thereto, the notification under sec. 10(3) of the Act was issued and published on 3rd April 1986. Thereafter one notice under sec. 10(5) of the Act came to be issued on 26th/27th May 1986 calling upon respondent No. 4 herein to hand over the excess land declared surplus by the order at Annexure A to this petition. A copy of the aforesaid notice under sec. 10(5) of the Act is at Annexure B to this petition. It appears that respondent No. 4 did not hand over possession of the excess land. Thereupon its possession was taken over by respondent No. 3 on 9th September 1986 in presence of panchas and the necessary intimation in that regard was given to respondent No. 4 herein on 30th September 1986. Its copy is at Annexure C to this petition. It appears that the petitioner society thereupon came to know of the proceeding culminating into the order at Annexure A to this petition and the actions represented by the documents at Annexures B and C to this

petition. It therefore carried the matter in appeal before respondent No. 2 under sec. 33 of the Act. A copy of the memo of appeal is at Annexure H to this petition. It came to be registered as Appeal No. Surat-155 of 1986. By the order passed on 31st July 1987 in the aforesaid appeal, respondent No. 2 dismissed it. Its copy is at Annexure D to this petition. That aggrieved the society and its members. They have therefore approached this Court by means of this petition under art. 226 of the Constitution of India for questioning the correctness of the order at Annexure A to this petition as affirmed in appeal by the appellate order at Annexure D to this petition as also consequential actions represented by the documents at Annexures B and C to this petition.

3. It cannot be gainsaid that the petitioner society was merely a proposed society on the date of coming into force of the Act. It had agreed to purchase the land by the document at Annexure G to this petition. It cannot be gainsaid that an agreement to purchase does not create any interest in any immovable property in the proposed purchaser under sec. 54 of the Transfer of Property Act, 1882. In that view of the matter, the petitioner proposed society could not have any interest in the disputed land by virtue of the agreement at Annexure G to this petition. It cannot therefore be said to be an interested person.

4. It has been urged by learned Advocate Shri Vakil for the petitioners that possession of the disputed land was handed over to the petitioner society after execution of the agreement at Annexure G to this petition and the petitioner society could therefore be said to be a person interested in the disputed land. That case of the petitioner society has not been believed by respondent No. 2 in the appellate order at Annexure D to this petition. Whether or not the petitioner society was in possession of the disputed land at the relevant time would certainly be a finding of fact. Respondent No. 2 has recorded that finding on the basis of the material on record. It is not shown to be perverse in any manner. In that view of the matter, it cannot be upset in this petition under art. 226 of the Constitution of India.

5. Even if it is assumed for the sake of argument that the aforesaid finding recorded by respondent No. 2 in his impugned order at Annexure D to this petition is perverse, that does not carry the cause of the petitioners any further. As indicated hereinabove, the petitioner society was merely a proposed society on the

date of coming into force of the Act. It is therefore not in existence as a society in the eyes of law. It was not registered under the Gujarat Co-operative Societies Act, 1961. Its members might therefore constitute an association of persons or a body of individuals. If as a collective body they were in possession of the disputed land, they were required to file the necessary declaration in the prescribed form under sec. 6(1) of the Act as the definition of "person" contained in sec. 2(i) of the Act would include an association of persons or a body of individuals. The very fact that no such declaration was filed by them or by the proposed society as a body of individuals or an association of persons would go to show that they were not in possession of the disputed land at the relevant time. Neither the petitioner proposed society nor its members can therefore be said to be persons interested in the disputed land. They would therefore be not entitled to any hearing in the proceeding arising from the declaration filed by respondent No. 4 herein in view of rule 5 of the Urban Land (Ceiling and Regulation) Rules 1976 framed under the Act.

6. There is one more aspect of the case. Prior to issue of the notification under sec. 10(3) of the Act, as pointed out hereinabove, the notification under sec. 10(1) of the Act was issued on 8th November 1985 and it was published on 12th December 1985 in the Government Gazette. The petitioners could have filed their objection, if any, under sec. 10(2) thereof. It is not their case that they filed their objections and their objections were overruled. That would lend support to my conclusion that the petitioners were not in possession of the disputed land at the relevant time.

7. A reference deserves to be made to the ruling of this Court in the case of Muktinagar Co-operative Housing Society Ltd. v. Competent Authority and Deputy Collector, Ahmedabad and others reported in 1988(1) 29(1) G.L.R. 49. Practically in a similar fact-situation, this Court has held that the order passed by the authority without hearing the society is not vitiated. Sitting as a single Judge, the aforesaid ruling of this Court is binding to me. Even otherwise, I am in respectful agreement therewith.

8. Practically to the same effect are the rulings of this Court in the case of New Jalaram Park Co-operative Housing Society Ltd. and another v. Ramchandra M. Chauhan and others reported in 1988(1) 29(1) G.L.R. 82 and in the case of Suryapur Co-operative Housing Society

Ltd. v. State of Gujarat and another reported in 1989(1) 30(1) G.L.R. 674 and in the case of Navsarjan Industrial Co-operative Society Ltd. v. State of Gujarat and others reported in 1995(1) G.L.H. 1011.

9. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure A to this petition as indirectly affirmed by the order at Annexure B to this petition calls for no interference by this Court in this petition under art. 226 of the Constitution of India. Since the impugned orders are sustained in law, the consequential actions will have also to be maintained.

10. Ordinarily, when respondents Nos. 4 to 6 are found not to have been served, this matter could be said to be unready and unripe for hearing. However, this is a matter of 1988 and since the judgment does not affect the rights of respondents Nos. 4 to 6 herein, I have not thought it fit to insist on service of the rule in this case to respondents Nos. 4 to 6.

11. In the result, this petition fails. It is hereby rejected. Rule is discharged with no order as to costs. The interim relief stands vacated.

12. At the oral request of learned Advocate Shri Vakil for the petitioners, the order of vacating the interim relief is stayed for a period of two weeks from today with a view to enabling the aggrieved petitioners to challenge this judgment of mine by means of an appropriate proceeding before an appropriate forum.